

Plaintiffs' Exhibit 69

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES,) Case No.
et al.,) 1:23-cv-00108-LMB-JFA
)
Plaintiffs,)
)
vs.)
)
GOOGLE LLC,)
)
Defendant.)

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VIDEOTAPED 30(b)(6) DEPOSITION OF
UNITED STATES ARMY
through the testimony of
COLONEL JOHN HORNING
September 29, 2023
1:06 p.m.

Reported by: Bonnie L. Russo
Job No. 6105371

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<p>1 been on or about May of 2021 through on or 2 about late April of 2023.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. And it's the army's testimony that 5 Lieutenant Colonel Morris was the COR for the 6 national media talent and furnishing task order 7 over the period May 2021 to April 2023?</p> <p>8 MS. CLEMONS: Objection to form.</p> <p>9 THE WITNESS: No. He was in the 10 position then -- I believe he passed the 11 contracting officer's representative duties to 12 Major Lee-Ann Craig in the fall of 2022. He 13 was her supervisor, but I think the actual 14 designation as a COR once she came into the 15 office was moved to her and she took that over, 16 as best I recall in September or October of 17 2022, same task order and she took 18 responsibility from him as she reported to him 19 but as a part of her assignment, she took that 20 responsibility over.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q. So am I understanding the army's</p>	<p>1 transcription, there was some ambiguity because 2 we also talked about one of the task orders 3 that was COR ops, and that was C-O-R-E, and it 4 came back in the transcript as C-O-R, the same 5 as contracting officer's representative so I am 6 just trying to be -- just to be clear in the 7 event that there is any confusion.</p> <p>8 Q. Okay. Appreciate that.</p> <p>9 Did you speak with Major Craig to 10 prepare for your deposition today?</p> <p>11 A. Yes, I did.</p> <p>12 Q. How long did you speak with Major 13 Craig?</p> <p>14 A. I spoke with her over the course of 15 several days, probably a total of two hours, if 16 I summed it up.</p> <p>17 Q. What did you speak with Major Craig 18 about?</p> <p>19 MS. CLEMONS: Objection. Form.</p> <p>20 THE WITNESS: We spoke predominantly 21 about the deliverables associated with our 22 media plan, the strategy element of it first</p>
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<p>1 testimony correctly that Lieutenant Colonel 2 Morris was the COR on the national media talent 3 and furnishings task order from May 2021 4 through September or October of 2022?</p> <p>5 A. Without the specific documentation 6 in front of me, I believe that that represents 7 an accurate timeline.</p> <p>8 Q. And Major Lee-Ann Craig, for what 9 period of time was she the COR on the paid 10 media task order?</p> <p>11 A. As best as I can recall without 12 having her appointment documentation in front 13 of me for a specific date, she began the role 14 in September of 2022 and is still currently the 15 contracting officer's representative on the 16 national media talent and furnishings task 17 order.</p> <p>18 Q. You understand when I am saying 19 "COR," I am also referring -- I'm referring to 20 the contracting officer representative. Yes?</p> <p>21 A. I understand or I believe that to be 22 your -- but I did notice in the last deposition</p>	<p>1 and the tactical plan. We talked a little bit 2 about some of the deliverables that highlight 3 the specifics of the plan and then we also went 4 through some of her example billing and 5 invoices and how she -- how she reviews them 6 before they get accepted in the -- in the 7 billing system.</p> <p>8 Q. Is it Major Craig's duties to review 9 bills before they are accepted for payment?</p> <p>10 MS. CLEMONS: Objection. Form.</p> <p>11 THE WITNESS: That is one of the 12 responsibilities of the contracting officer's 13 representative to review the invoices prior, to 14 check them against everything from the dates of 15 the task order to ensure that it's appropriate 16 and then also to match it against the elements 17 of the plan, to make sure that was something 18 that was approved ahead of time, and then so 19 that's the responsibility of any COR and then 20 as such for her, that was her responsibility in 21 that particular task order.</p> <p>22 BY MS. GOODMAN:</p>

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<p>1 Q. Was there -- strike that.</p> <p>2 With Lieutenant Colonel Morris, what</p> <p>3 did you speak about with him with regards to</p> <p>4 DV360?</p> <p>5 MS. CLEMONS: Objection to form.</p> <p>6 THE WITNESS: What I spoke about</p> <p>7 with him was -- in order to gain a little bit</p> <p>8 more understanding of how we had purchased</p> <p>9 DV360, a little bit better understanding of the</p> <p>10 product with respect to how it may be</p> <p>11 differentiated from other ad products online</p> <p>12 that we have used and a little bit of</p> <p>13 information on how we had come to use that</p> <p>14 particular product.</p> <p>15 BY MS. GOODMAN:</p> <p>16 Q. How did the army come to use the</p> <p>17 particular product, DV360?</p> <p>18 MS. CLEMONS: Objection. Form.</p> <p>19 THE WITNESS: So the army develops a</p> <p>20 media plan every year in line with the</p> <p>21 strategic objectives that we are attempting to</p> <p>22 meet, to reach with respect to the various ways</p>	<p>1 A. We were using both Verizon DSP and</p> <p>2 DV360.</p> <p>3 Q. And what differences between the</p> <p>4 Verizon DSP and DV360 did the army observe?</p> <p>5 MS. CLEMONS: Objection to form.</p> <p>6 THE WITNESS: So before we made any</p> <p>7 determination, late in calendar year 2021, we</p> <p>8 looked at performance of both products and</p> <p>9 found them to be equivalent, at least in our</p> <p>10 purposes in terms of performance delivery.</p> <p>11 The media team though recommended</p> <p>12 that the army could have some efficiency gained</p> <p>13 if we were to reduce one product and the</p> <p>14 recommendation was to cease using Verizon DSP</p> <p>15 and use Google's DV360.</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q. Why was the recommendation to cease</p> <p>18 using Verizon's DSP?</p> <p>19 MS. CLEMONS: Objection to form.</p> <p>20 THE WITNESS: Based on both products</p> <p>21 appearing to deliver equivalent results within</p> <p>22 -- within the audience, so from a purely -- how</p>
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<p>1 to serve and in an accessions environment,</p> <p>2 essentially getting people to join.</p> <p>3 When then Major Morris, now</p> <p>4 Lieutenant Colonel Morris took over the</p> <p>5 national media talent and furnishings on or</p> <p>6 around April of 2021, it's my understanding</p> <p>7 from speaking with him that we were using more</p> <p>8 than one product for display advertising, and</p> <p>9 as he explained it to me, we had observed</p> <p>10 performance and costs associated with both, and</p> <p>11 then he had made recommendations in the fall of</p> <p>12 2021 that we consider not using the two</p> <p>13 products and instead use just one product.</p> <p>14 And then as I recall, early in</p> <p>15 calendar year 2022, perhaps January, I can't be</p> <p>16 certain, but the recommendation was made and</p> <p>17 AMO leadership approved that we consolidate and</p> <p>18 just use one product and that was DV360.</p> <p>19 BY MS. GOODMAN:</p> <p>20 Q. What was the other display</p> <p>21 advertising product that the army was using</p> <p>22 prior to 2022?</p>	<p>1 the audience perceives, judges, interacts,</p> <p>2 creative, there was an efficiency possible as</p> <p>3 recommended by Colonel Morris that said we</p> <p>4 could -- we could potentially save money,</p> <p>5 resources, by consolidating and his</p> <p>6 recommendation was that the product we</p> <p>7 consolidate to was Google DV360.</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q. What efficiencies were possible by</p> <p>10 consolidating to DV360?</p> <p>11 MS. CLEMONS: Objection to form.</p> <p>12 THE WITNESS: As I understand it,</p> <p>13 there was just an overall cost savings that the</p> <p>14 army could realize by not using two separate</p> <p>15 platforms. I don't have the figures of any</p> <p>16 specific amount.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q. And did the army, in fact, achieve</p> <p>19 the overall cost savings by not using two</p> <p>20 separate platforms?</p> <p>21 MS. CLEMONS: Objection. Form.</p> <p>22 Foundation.</p>

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<p style="text-align: right;">Page 38</p> <p>1 accounting service so they actually handle the</p> <p>2 cash, if you will, even if it is electronic for</p> <p>3 the defense department, the defense finance and</p> <p>4 accounting service, and GFEBS is more like the</p> <p>5 software that is used for accounting purposes.</p> <p>6 Q. And what is wide area work flow?</p> <p>7 A. Wide area work flow is a system that</p> <p>8 -- perhaps among other things, primarily, as I</p> <p>9 am familiar with and how we use it, is used for</p> <p>10 contracting purposes and our primary use of it</p> <p>11 is in receiving our invoices, ensuring that</p> <p>12 they match the task order number and</p> <p>13 appropriate CLINs that are associated with the</p> <p>14 task order and actually review the invoices</p> <p>15 that a contractor provides against our plans,</p> <p>16 make sure it's, you know, in scope, right</p> <p>17 dates, right amounts, was what we actually</p> <p>18 worked on, what was actually delivered, and</p> <p>19 then the COR within the wide area work flow</p> <p>20 will accept that invoice and then being that</p> <p>21 that is a software system, in and of itself,</p> <p>22 it's linked to GFEBS for basically being able</p>	<p style="text-align: right;">Page 40</p> <p>1 essentially, our flowchart and the firm flex,</p> <p>2 two deliverables per the task order that lay</p> <p>3 out the elements of the plan, what we have</p> <p>4 approved and then capture that.</p> <p>5 Both those documents are used by the</p> <p>6 team to check if we are getting what we paid</p> <p>7 for and to also ensure it is sort of documented</p> <p>8 and memorialized the plan that we have agreed</p> <p>9 to, and then again, the COR uses them to check</p> <p>10 invoices and to see that they match what we</p> <p>11 have, the plan that -- that we approved is what</p> <p>12 we are getting billed for.</p> <p>13 Q. So you mentioned three kinds of</p> <p>14 documents there in your answer.</p> <p>15 Can you explain to me what the</p> <p>16 strategic plan is as compared to the tactical</p> <p>17 plan as compared to the firm flex plan?</p> <p>18 A. Sure.</p> <p>19 MS. CLEMONS: Objection to form.</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q. Or document.</p> <p>22 A. So the media plan starts from</p>
<p style="text-align: right;">Page 39</p> <p>1 to debit or credit the appropriate accounts,</p> <p>2 and then which are also linked to DFAS to then</p> <p>3 actually effect the payment to whomever it is.</p> <p>4 So wide area work flow is a system</p> <p>5 in which we are managing the invoicing and --</p> <p>6 and elements of the contract by task order and</p> <p>7 CLIN.</p> <p>8 Q. What did you speak with Major Dan</p> <p>9 Duplessis about?</p> <p>10 A. Major Dan Duplessis is the current</p> <p>11 branch chief for paid media. He is Major</p> <p>12 Lee-Ann Craig's supervisor and he took over for</p> <p>13 Lieutenant Colonel Morris. He did not take</p> <p>14 over the COR role though. That was -- as we</p> <p>15 discussed earlier, that was passed from Colonel</p> <p>16 Morris to Major Craig.</p> <p>17 So my discussion with him was a</p> <p>18 little bit more about the media plan and some</p> <p>19 of the deliverables from the strategy to the</p> <p>20 strategic plan down to the tactical plan and a</p> <p>21 couple of deliverables that we used to ensure</p> <p>22 elements of the plan. The -- our --</p>	<p style="text-align: right;">Page 41</p> <p>1 identifying the objectives that we have for</p> <p>2 accessions. The first deliverable after we</p> <p>3 define for the agency strategic objectives, we</p> <p>4 define the audience, we also begin to define at</p> <p>5 that point, as we will understand what our</p> <p>6 likely budget will be, given that it's</p> <p>7 government budget and so there are the</p> <p>8 intricacies of government budgeting systems and</p> <p>9 things, in terms of president's budget is</p> <p>10 signed or not, and what we will have, and so</p> <p>11 with a -- with a reasonable guesstimate of what</p> <p>12 we think the budget will be based on previous</p> <p>13 requests, we give the agency essentially some</p> <p>14 broad guidance on this is what we would like to</p> <p>15 achieve. This is a specific deliverable, the</p> <p>16 strategic plan for them to come back with</p> <p>17 several courses of action of how we might reach</p> <p>18 those objectives using, in this case, the</p> <p>19 national media -- national media talent and</p> <p>20 furnishings task orders so in this area, how</p> <p>21 media can best help.</p> <p>22 They will develop that plan in</p>

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<p style="text-align: right;">Page 42</p> <p>1 consultation with the branch chief and the 2 national media manager, so that would be in 3 this case, Major Duplessis and Major Craig, 4 will work with their agency partners to develop 5 this plan and then they will come back and 6 brief the strategy plan, which essentially is a 7 couple of courses of action that address sort 8 of -- in big rocks, the audience that we are 9 trying to achieve and how we might apportion 10 the investment by product for AEMO concurrence. 11 When they get direction from AEMO 12 leaders then on which of the courses of action 13 that we may select or -- or guidance, 14 additional guidance to go back and rework or 15 however it may be, they go to work on the 16 national tactical plan. 17 The tactical plan will include much 18 more detail into specific partners and channel 19 mix. As the name tactical differentiated from 20 strategic implies, it will have a lot more 21 detail, a lot more granular information about 22 what the plan is going to be.</p>	<p style="text-align: right;">Page 44</p> <p>1 service. 2 In this case, we are talking about 3 media inventory and they will have depending on 4 the network or channel or whatever, have terms 5 associated with and lock in a month, lock in 6 two months, whatever it may be per vendor. But 7 understanding that at certain times, if we want 8 to make a change, we may be in a position where 9 we could lose money, and so that's kind of the 10 firm part, and then it's almost like drawing a 11 line between those things that are already 12 committed and if you were to change it now, 13 you'd risk losing your investment, your money, 14 because we have made an agreement with the 15 vendor already, and those things that are still 16 sort of outside that lock-in window, which if 17 you wanted to change, we could still change. 18 So the strategic plan, the tactical 19 plan, the flowchart and the firm flex are the 20 primary. There is lots of other documentation 21 and reports after the fact and how it's going 22 and -- but those are the primary sort of</p>
<p style="text-align: right;">Page 43</p> <p>1 That plan brief will come back as 2 well for brief and approval, usually it will go 3 through several discussions between AEMO 4 leaders and the media team before we settle on 5 an approved plan. Once we have settled on an 6 approved plan, one of the next deliverables 7 will be the flowchart which will show by month 8 and by channel mix, and to the extent we are 9 able to by product, I talk about enlisted or 10 officer or different ways -- different ways to 11 serve, but by channel mix, there by month, how 12 much, what our actual dollar plan investment 13 across all the months of the plan are going to 14 be. Excuse me. 15 The next document from that that I 16 mentioned was the firm flex. That essentially 17 gives us a little bit more information so with 18 regard to how much flexibility we have to make 19 adjustments in out times, in out months, weeks, 20 whatever it may be, given that -- like with any 21 vendor, we know, we may make a commitment to 22 purchase whatever contract, whatever good or</p>	<p style="text-align: right;">Page 45</p> <p>1 planning deliverables and products though each 2 may have some other supporting efforts as well. 3 Q. Is it the contracting officer 4 representative's responsibility to determine 5 that these deliverables that you have 6 mentioned, the strategic plan, national 7 tactical plan, flowcharts and firm flex 8 documentation are satisfactory to the army? 9 MS. CLEMONS: Objection. Form. 10 THE WITNESS: Yes. Within the 11 construct of the deliverables outlined by the 12 performance work statement, that is part of the 13 contracting officer's responsibility is to make 14 a determine -- surveil the quality of 15 deliverable and ensure that we are getting the 16 items that we are supposed to per the terms and 17 that they represent a quality product as well. 18 BY MS. GOODMAN: 19 Q. And what you just described, is that 20 the contracting officer or the COR's 21 responsibility? 22 A. It's the COR's responsibility.</p>

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<p>1 MS. CLEMONS: Objection to form.</p> <p>2 BY MS. GOODMAN:</p> <p>3 Q. Okay. Can somebody other than a COR</p> <p>4 tell the ad agency, DDB, that, for example, the</p> <p>5 strategic plan is acceptable to the army?</p> <p>6 MS. CLEMONS: Objection to form.</p> <p>7 THE WITNESS: We have quite a bit of</p> <p>8 meetings and interaction at multiple levels</p> <p>9 from our leader, at the highest, our AEMO's</p> <p>10 leader, to the deputy to director level, my</p> <p>11 level to branch chief to contracting officer's</p> <p>12 representative, probably representing at the</p> <p>13 lowest level, where we will discuss any</p> <p>14 particular topic related to, you know, in this</p> <p>15 case, we are talking about national media plan,</p> <p>16 or we may discuss elements of the strategic</p> <p>17 plan, what we like, what we don't like, what</p> <p>18 our thoughts are.</p> <p>19 We will have discussions on an</p> <p>20 approval brief. All of those discussions are</p> <p>21 professional in nature in order to best get the</p> <p>22 sense of what the army wants and/or what the</p>	<p>1 BY MS. GOODMAN:</p> <p>2 Q. Okay. I am handing you what I am</p> <p>3 marking as Exhibit 99. It was previously</p> <p>4 marked in a deposition as 99 so that's why it</p> <p>5 has this number.</p> <p>6 And my question to you, Colonel</p> <p>7 Horning, is whether you recognize this as the</p> <p>8 base IDIQ contract between the army and DDB.</p> <p>9 A. Yes, in the pages I am looking at so</p> <p>10 far, I recognize it as our base IDIQ.</p> <p>11 Q. And IDIQ stands for indefinite</p> <p>12 delivery, indefinite quantity, correct?</p> <p>13 A. That is correct.</p> <p>14 Q. And is it accurate that the army</p> <p>15 uses IDIQ contracts because it cannot determine</p> <p>16 above a specified minimum, the precise</p> <p>17 quantities of supplies or services that the</p> <p>18 army will require during the contract period?</p> <p>19 MS. CLEMONS: Objection to form.</p> <p>20 THE WITNESS: That sounds correct.</p> <p>21 I'm not sure what you are reading from, if that</p> <p>22 was from an official government publication,</p>
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<p>1 agency is presenting, but when any decision is</p> <p>2 made by army leadership, it is always the</p> <p>3 responsibility and requirement that the</p> <p>4 contracting officer's representative capture</p> <p>5 and then deliver that message officially, so</p> <p>6 while we may talk in a meeting like this across</p> <p>7 the room, ultimately, and has always been the</p> <p>8 case as long as I have been in any discussion,</p> <p>9 whichever senior leader, it could be more</p> <p>10 senior than me perhaps me, will always say,</p> <p>11 hey, but you will get that direction from the</p> <p>12 COR after the conclusion of this, and the COR</p> <p>13 generally compiles the notes, make sure they</p> <p>14 got the leadership's intent right, and then</p> <p>15 they are responsible to deliver the actual --</p> <p>16 this is the direction from the army to you.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q. And that answer you just provided,</p> <p>19 it applies to the other deliverables we talked</p> <p>20 about, correct?</p> <p>21 MS. CLEMONS: Objection to form.</p> <p>22 THE WITNESS: That's correct.</p>	<p>1 but as I understand the IDIQ, it is a contract</p> <p>2 vehicle option that the government has, in this</p> <p>3 case, that the army has, in order to pursue</p> <p>4 goods and service where we may not know the</p> <p>5 exact quantity or the exact due date or the</p> <p>6 exact delivery circumstance because, for</p> <p>7 example, in our case, we are operating in the</p> <p>8 market and there are things that may happen</p> <p>9 where we would want to either take advantage of</p> <p>10 or may change something that we had intended to</p> <p>11 deliver and we stopped, and so an indefinite</p> <p>12 delivery, indefinite quantity provides a</p> <p>13 measure of flexibility to say we want this good</p> <p>14 or service, but we may need to tell you later</p> <p>15 how much and when to actually deliver them, and</p> <p>16 that's just a different sort of vehicle which</p> <p>17 does allow for some flexibility that may not be</p> <p>18 appropriate in all other contracting scenarios,</p> <p>19 but in one like ours, where we are bidding in</p> <p>20 -- or we are working in an open market, you</p> <p>21 know, outside of just acquiring tanks.</p> <p>22 We are acquiring ads which lots of</p>

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<p>1 not the deciding authority on how we might</p> <p>2 resolve an error.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. And when you say that's your</p> <p>5 mistake, you eat the cost, that's something</p> <p>6 that the army could tell one of its contractors</p> <p>7 when it spends outside of what it is authorized</p> <p>8 to spend; is that correct?</p> <p>9 MS. CLEMONS: Objection to form.</p> <p>10 THE WITNESS: Ultimately the</p> <p>11 contractor is responsible for the terms of the</p> <p>12 performance work statement. And the</p> <p>13 contracting officer's representative, in</p> <p>14 surveilling and overseeing the delivery of the</p> <p>15 elements of the performance work statement,</p> <p>16 could make a determination that something was</p> <p>17 or was not met or was or was not delivered</p> <p>18 appropriately or accordingly.</p> <p>19 Ultimately it would be the KO's</p> <p>20 determination, but I believe it to be accurate</p> <p>21 to say that in instances in which a delivery or</p> <p>22 a deliverable or the manner in which something</p>	<p>1 their own operating budget, expenses, profits.</p> <p>2 BY MS. GOODMAN:</p> <p>3 Q. Does the army have a contract with</p> <p>4 Google relative to digital advertising?</p> <p>5 MS. CLEMONS: Objection to form.</p> <p>6 Foundation.</p> <p>7 THE WITNESS: I'm not aware of a</p> <p>8 contract between the army and Google. I</p> <p>9 understand Google is one of the media vendors</p> <p>10 that the army purchases inventory from with the</p> <p>11 facilitation of our media buying agency.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q. And the facilitation of your media</p> <p>14 buying agency, that includes DDB and its</p> <p>15 subcontractor OMD; is that correct?</p> <p>16 MS. CLEMONS: Objection to form.</p> <p>17 THE WITNESS: The army has a</p> <p>18 contract with DDB. OMD, an affiliate who is a</p> <p>19 subcontractor to DDB does the labor associated</p> <p>20 with the purchase and using whatever it is,</p> <p>21 their media buying service, back to our earlier</p> <p>22 discussion about why they, you know, were</p>
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<p>1 was done, if it did not meet the army's</p> <p>2 requirements per the PWS, that the army, the</p> <p>3 government could refuse payment for something</p> <p>4 that didn't meet -- didn't meet standards.</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q. And when the army -- in such a</p> <p>7 circumstance that the army refuses payment, is</p> <p>8 it the contractor's responsibility to still pay</p> <p>9 the cost to the vendor?</p> <p>10 MS. CLEMONS: Objection. Form.</p> <p>11 Foundation.</p> <p>12 THE WITNESS: It's my</p> <p>13 understanding -- although I think that probably</p> <p>14 gets into some other contract piece that I may</p> <p>15 not be expert, but in my understanding, yes.</p> <p>16 Ultimately DDB made a commitment</p> <p>17 here to their subcontractor who made a</p> <p>18 commitment to a vendor and funds were already</p> <p>19 committed, spent. I'm not sure that they use</p> <p>20 the same sort of budget terms that we use. And</p> <p>21 that in this case, DDB itself could be told</p> <p>22 that they will have to absorb that cost out of</p>	<p>1 awarded the contract by their abilities and</p> <p>2 capabilities system they have to purchase the</p> <p>3 media, to physically conduct the transactions</p> <p>4 and then also to load and traffic and send the</p> <p>5 creative assets to the vendors who are giving</p> <p>6 us the space or whoever, the display area,</p> <p>7 wherever, TV, radio, anything, Internet as</p> <p>8 well, the same.</p> <p>9 And then ultimately though, the</p> <p>10 costs for all of those things are still sent</p> <p>11 back to the army so when we talk about the</p> <p>12 invoice review, the media COR gets the invoice</p> <p>13 from Google or whichever vendor and then</p> <p>14 ultimately has to match that back up to the</p> <p>15 media plan and pays that.</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q. And in the course of your review of</p> <p>18 invoices in order to prepare for the deposition</p> <p>19 today, you saw that invoices are issued from a</p> <p>20 vendor to OMD, correct?</p> <p>21 MS. CLEMONS: Objection to form.</p> <p>22 Foundation.</p>

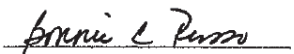
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<p>1 THE WITNESS: So actually, as I</p> <p>2 recall, looking at several invoices, the</p> <p>3 invoice still had army as its To. It was</p> <p>4 provided physically or e-mailed physically</p> <p>5 first to OMD, who would collect all of the</p> <p>6 various invoices, bundle them, provide them to</p> <p>7 DDB who reviews, who then would be the</p> <p>8 responsible party for entering that bundled --</p> <p>9 and it could be by a couple weeks, a month,</p> <p>10 whatever the time period may be. Provides that</p> <p>11 bundled set of invoices after their review and</p> <p>12 certification that these do represent to the</p> <p>13 best of their knowledge, true and accurate,</p> <p>14 into the wide area work flow system whereby</p> <p>15 then the COR can see them and then review them</p> <p>16 against the army's approved media plan.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q. And so in -- basically, there are a</p> <p>19 few steps, vendor issues invoice to OMD, OMD</p> <p>20 bundles invoices to DDB and then DDB issues</p> <p>21 invoices to the army, correct?</p> <p>22 MS. CLEMONS: Objection to form.</p>	<p>1 context of an approved plan, the discussion is</p> <p>2 and then there is an expectation of what we are</p> <p>3 getting for it as well.</p> <p>4 We don't approve a plan just based</p> <p>5 on dividing up the money. It's also with what</p> <p>6 do we believe we are getting for each of those</p> <p>7 divisions of money on the various products or</p> <p>8 the various inventories, creative deliveries</p> <p>9 that, you know, we may be purchasing in the</p> <p>10 media plan.</p> <p>11 BY MS. GOODMAN:</p> <p>12 Q. Does the army negotiate the price of</p> <p>13 digital media with any vendor?</p> <p>14 MS. CLEMONS: Objection to form.</p> <p>15 Foundation.</p> <p>16 THE WITNESS: It depends. There are</p> <p>17 negotiations that occur in the context of</p> <p>18 building out the plan, specifically when we are</p> <p>19 talking -- we're at the level of the tactical</p> <p>20 plan. And there are -- there is more than one</p> <p>21 vendor out there and as we are developing a</p> <p>22 tactical plan, we may receive proposals from</p>
Page 91	Page 93
<p>1 THE WITNESS: So for cost CLIN items</p> <p>2 or in other direct expense, where it is not a</p> <p>3 labor cost and it's not other type of contract</p> <p>4 line item, for a cost CLIN like this. Yeah,</p> <p>5 the vendor issues the invoice, although issues</p> <p>6 to -- it is still to army, but provides the</p> <p>7 physical invoice for routing first through OMD</p> <p>8 and media.</p> <p>9 First through OMD. OMD as the</p> <p>10 affiliate subcontractor then bundles and sends</p> <p>11 to DDB and then DDB personnel are responsible</p> <p>12 for loading them into the wide area work flow.</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q. Okay. Does the army play any direct</p> <p>15 role in negotiating the purchase of any digital</p> <p>16 media?</p> <p>17 MS. CLEMONS: Objection to form.</p> <p>18 THE WITNESS: The army plays a role</p> <p>19 in that we are the decision authority of what</p> <p>20 gets placed when and where and the amount in</p> <p>21 which we are spending on it. How much we are</p> <p>22 dedicating to, and then of course, in the</p>	<p>1 vendors and in that proposal, hey, this is what</p> <p>2 we can do, here's an example of how we will,</p> <p>3 you know, support you, what we can provide, we</p> <p>4 may or may not like all of the items or they</p> <p>5 may be fantastic but maybe it's too much or</p> <p>6 maybe it's not interesting to us.</p> <p>7 So there is some negotiation from</p> <p>8 the vendor and us as a team between the army,</p> <p>9 the DDB mission task lead and the media for</p> <p>10 this case and the OMD team to review what is</p> <p>11 proposed by a vendor and maybe counter-propose</p> <p>12 or accept or deny altogether until ultimately</p> <p>13 we get to something that we are all comfortable</p> <p>14 that this represents something we are</p> <p>15 interested in and we believe it's at a fair</p> <p>16 price for what is being offered, and then we</p> <p>17 will move towards the actual sort of -- we'll</p> <p>18 book that or we'll approve those items as a</p> <p>19 part of the plan.</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q. Did the army purchase any display</p> <p>22 advertising directly from Google?</p>

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<p>1 Morris?</p> <p>2 A. I think as I said earlier in my</p> <p>3 testimony, I believed it to be early in</p> <p>4 calendar year '22, whether it was 10 March or</p> <p>5 not, or whether we had made the decision and</p> <p>6 these were older slides or we were in the</p> <p>7 process of making that change right then, it</p> <p>8 could be.</p> <p>9 Q. And if you look at your e-mail on</p> <p>10 the first page, 70535, five bullets -- five</p> <p>11 slashes down where you write: "Lennox and</p> <p>12 Nicole."</p> <p>13 Do you see where I am?</p> <p>14 A. Yes.</p> <p>15 Q. You write: "Lennox and Nicole,</p> <p>16 additionally, I need some feedback from you</p> <p>17 two, since you initially offered, on what you</p> <p>18 see as additional workload requirements</p> <p>19 associated with taking on COR duties."</p> <p>20 So does this refresh your</p> <p>21 recollection that as of the date of this</p> <p>22 e-mail, March 1, Colonel Morris was not the</p>	<p>1 MS. GOODMAN: Thank you, sir, I have</p> <p>2 no further questions.</p> <p>3 MS. CLEMONS: We can go off the</p> <p>4 record.</p> <p>5 THE VIDEOGRAPHER: The time is</p> <p>6 p.m. We are off the record.</p> <p>7 (A short recess was taken.)</p> <p>8 THE VIDEOGRAPHER: The time is</p> <p>9 p.m. We are on the record.</p> <p>10 EXAMINATION BY COUNSEL FOR PLAINTIFF</p> <p>11 BY MS. CLEMONS:</p> <p>12 Q. Colonel Horning, I just have a few</p> <p>13 questions for you.</p> <p>14 When OMD is executing purchases of</p> <p>15 digital display advertising on army's behalf,</p> <p>16 can they use any vendor that they decide they</p> <p>17 would like to use for those purchase</p> <p>18 executions?</p> <p>19 MS. GOODMAN: Object to form.</p> <p>20 THE WITNESS: So when we are</p> <p>21 developing the plan and we get to the stage</p> <p>22 where it's the tactical, which would be the</p>
Page 103	Page 105
<p>1 COR?</p> <p>2 A. Yes. I guess that would be accurate</p> <p>3 then. We were making that decision at the time</p> <p>4 of these e-mails.</p> <p>5 Q. Okay. And then just my last</p> <p>6 question to you, sir, your last slash here,</p> <p>7 sitting here today, do you still believe that</p> <p>8 it's important for your team to keep their work</p> <p>9 within the 9 to 5 hours as much as possible?</p> <p>10 MS. CLEMONS: Objection to form.</p> <p>11 Foundation.</p> <p>12 THE WITNESS: So as much as</p> <p>13 possible, yes. Frankly, that's not always --</p> <p>14 that's not always possible and soldiers are in</p> <p>15 the army 24/7. However, we are also cognizant</p> <p>16 of wanting people to be able to have their time</p> <p>17 at home, be their time away from work,</p> <p>18 considering, you know, much of this is borne</p> <p>19 out of -- most all of us have been to war and</p> <p>20 have been away for a year at a time, and so</p> <p>21 we're much more attuned to when we're home,</p> <p>22 have some time to be home too.</p>	<p>1 first time we would talk about vendors in</p> <p>2 general, the earlier stages of the plan</p> <p>3 development of strategy, don't mention any</p> <p>4 vendors, but once we are into the tactical</p> <p>5 development, OMD may recommend anyone and may</p> <p>6 recommend as a part of the plan any vendor.</p> <p>7 I think based on their experience</p> <p>8 working with us, we have probably coalesced</p> <p>9 around certain vendors in general, certain</p> <p>10 things that they wouldn't recommend as being</p> <p>11 incorrect for the audience or not brand safe or</p> <p>12 whatever. We don't have any concerns about</p> <p>13 brand safety with our current lineup, but they</p> <p>14 can recommend anything within that.</p> <p>15 However, ultimately, the ones that</p> <p>16 we then choose are based on the army's approval</p> <p>17 of the plan. Once the plan is approved, then</p> <p>18 each of the various vendors, whether it be CBS</p> <p>19 or whether it be Google DV360, or whether it be</p> <p>20 Condé Nast if we were going to put something in</p> <p>21 magazines, once that's an approved part of the</p> <p>22 plan which is a task order deliverable of the</p>

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<p style="text-align: right;">Page 106</p> <p>1 plan, then that has to be stuck to, unless, you</p> <p>2 know, they may recommend -- maybe something</p> <p>3 changes in the market and they recommend we</p> <p>4 change something and then they'll bring that</p> <p>5 back to the army for approval again, but they</p> <p>6 can't change from what is the approved plan on</p> <p>7 their own.</p> <p>8 BY MS. CLEMONS:</p> <p>9 Q. And I believe you -- you testified</p> <p>10 earlier regarding whether the army is able to</p> <p>11 control or direct how -- the method by which</p> <p>12 the contractor or subcontractor carries out the</p> <p>13 contract requirement.</p> <p>14 Do you recall that testimony?</p> <p>15 A. I do.</p> <p>16 Q. Were you -- strike that.</p> <p>17 How does, what you just testified</p> <p>18 to, with respect to whether OMD can -- can</p> <p>19 decide on its own what vendors to use in</p> <p>20 executing display advertising purchases, square</p> <p>21 with your testimony about whether the army can</p> <p>22 control the method under the contract.</p>	<p style="text-align: right;">Page 108</p> <p>1 because that's what they agreed to within --</p> <p>2 having an agreed performance work statement in</p> <p>3 the contract.</p> <p>4 MS. CLEMONS: Thank you, Colonel</p> <p>5 Horning. That is all I have.</p> <p>6 MS. GOODMAN: Okay. Nothing</p> <p>7 further.</p> <p>8 THE VIDEOGRAPHER: The time is 3:31</p> <p>9 p.m. We are off the record.</p> <p>10 (Whereupon, the proceeding was</p> <p>11 concluded at 3:31 p.m.)</p>
<p style="text-align: right;">Page 107</p> <p>1 MS. GOODMAN: Object to the form.</p> <p>2 THE WITNESS: So I think there is a</p> <p>3 fundamental difference in those two pieces of</p> <p>4 the contract that get to that point, and the</p> <p>5 first part of the -- from the line of the base</p> <p>6 IDIQ and the government not directing is</p> <p>7 largely intended for the government not to tell</p> <p>8 the contractor how to run their business</p> <p>9 internally.</p> <p>10 But the difference with respect to</p> <p>11 the purchase of media is, these are also -- as</p> <p>12 part of the task order, specific deliverables</p> <p>13 that have to be approved by the army, so in</p> <p>14 this case, the elements of the media plan and</p> <p>15 the tactical plan and what is in it is already</p> <p>16 laid out as a deliverable that must be approved</p> <p>17 by the army as opposed to, you know, the thing</p> <p>18 that I mentioned in the sense of how they run</p> <p>19 their operation internally with number of</p> <p>20 employees or -- or types of computer systems</p> <p>21 they may use. That is at their discretion, but</p> <p>22 the deliverables are not at their discretion,</p>	<p style="text-align: right;">Page 109</p> <p>1 CERTIFICATE OF NOTARY PUBLIC</p> <p>2 I, Bonnie L. Russo, the officer before</p> <p>3 whom the foregoing deposition was taken, do</p> <p>4 hereby certify that the witness whose testimony</p> <p>5 appears in the foregoing deposition was duly</p> <p>6 sworn by me; that the testimony of said witness</p> <p>7 was taken by me in shorthand and thereafter</p> <p>8 reduced to computerized transcription under my</p> <p>9 direction; that said deposition is a true</p> <p>10 record of the testimony given by said witness;</p> <p>11 that I am neither counsel for, related to, nor</p> <p>12 employed by any of the parties to the action in</p> <p>13 which this deposition was taken; and further,</p> <p>14 that I am not a relative or employee of any</p> <p>15 attorney or counsel employed by the parties</p> <p>16 hereto, nor financially or otherwise interested</p> <p>17 in the outcome of the action.</p> <p>18</p> <p>19 </p> <p>20 Notary Public in and for</p> <p>21 the District of Columbia</p> <p>22 My Commission expires: August 14, 2025</p>

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<p style="text-align: right;">Page 110</p> <p>1 ACKNOWLEDGMENT OF DEPONENT</p> <p>2 I, COLONEL JOHN HORNING, do hereby certify</p> <p>3 that I have read the foregoing transcript of my</p> <p>4 testimony taken on 9/29/23, and further certify</p> <p>5 that it is a true and accurate record of my</p> <p>6 testimony (with the exception of the</p> <p>7 corrections listed below):</p> <table border="0"> <tr> <td>8</td> <td>Page</td> <td>Line</td> <td>Correction</td> </tr> <tr> <td>9</td> <td>_____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>10</td> <td>_____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>11</td> <td>_____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>12</td> <td>_____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>13</td> <td>_____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>14</td> <td>_____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>15</td> <td>_____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>16</td> <td>_____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>17</td> <td>_____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>18</td> <td colspan="3">_____</td> </tr> <tr> <td>19</td> <td colspan="3">COLONEL JOHN HORNING</td> </tr> <tr> <td>20</td> <td colspan="3">SUBSCRIBED AND SWORN TO BEFORE ME</td> </tr> <tr> <td>21</td> <td colspan="3">THIS ____ DAY OF _____, 2023.</td> </tr> <tr> <td>22</td> <td colspan="3">_____ (NOTARY PUBLIC) MY COMMISSION EXPIRES: Job No. CS6105371</td> </tr> </table>	8	Page	Line	Correction	9	_____	_____	_____	10	_____	_____	_____	11	_____	_____	_____	12	_____	_____	_____	13	_____	_____	_____	14	_____	_____	_____	15	_____	_____	_____	16	_____	_____	_____	17	_____	_____	_____	18	_____			19	COLONEL JOHN HORNING			20	SUBSCRIBED AND SWORN TO BEFORE ME			21	THIS ____ DAY OF _____, 2023.			22	_____ (NOTARY PUBLIC) MY COMMISSION EXPIRES: Job No. CS6105371			
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<p style="text-align: right;">Page 111</p> <p>1 Katherine Clemons, Esq.</p> <p>2 Katherine.clemons@usdoj.gov</p> <p>3 October 2, 2023</p> <p>4 RE: United States, Et Al v. Google, LLC</p> <p>5 9/29/2023, John Horning , Army 30(b)(6) (#6105371)</p> <p>6 The above-referenced transcript is available for</p> <p>7 review.</p> <p>8 Within the applicable timeframe, the witness should</p> <p>9 read the testimony to verify its accuracy. If there are</p> <p>10 any changes, the witness should note those with the</p> <p>11 reason, on the attached Errata Sheet.</p> <p>12 The witness should sign the Acknowledgment of</p> <p>13 Deponent and Errata and return to the deposing attorney.</p> <p>14 Copies should be sent to all counsel, and to Veritext at</p> <p>15 erratas-cs@veritext.com</p> <p>16</p> <p>17 Return completed errata within 30 days from</p> <p>18 receipt of testimony.</p> <p>19 If the witness fails to do so within the time</p> <p>20 allotted, the transcript may be used as if signed.</p> <p>21</p> <p>22 Yours,</p> <p>23 Veritext Legal Solutions</p> <p>24</p> <p>25</p>																																																													

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ACKNOWLEDGMENT OF DEPONENT

I, COLONEL JOHN HORNING, do hereby certify that I have read the foregoing transcript of my testimony taken on 9/29/23, and further certify that it is a true and accurate record of my testimony (with the exception of the corrections listed below):

Page	Line	Correction
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COLONEL JOHN HORNING

SUBSCRIBED AND SWORN TO BEFORE ME

THIS _____ DAY OF _____, 2023.

(NOTARY PUBLIC)

MY COMMISSION EXPIRES:

Job No. CS6105371